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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/619,425  | 07/16/2003  | Mark Edward Kane     | 3805-023-27 CONT    | 7325             |
| 7590  | 04/22/2004  |                      | EXAMINER            |                  |
| Supervisor, Patent Prosecution Services<br>PIPER RUDNICK LLP<br>1200 Nineteenth Street, N.W.<br>Washington, DC 20036-2412 |             |                      | JULES, FRANTZ F     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3617                |                  |

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                                |
|------------------------------|-----------------|--------------------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)                   |
|                              | 10/619,425      | KANE ET AL. <i>[Signature]</i> |
|                              | Examiner        | Art Unit                       |
|                              | Frantz F. Jules | 3617                           |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

The preliminary amendment need to be revised to remove the phrase "now allowed" since application No. 10/184,929 is a patent.

Appropriate correction is required.

### *Claim Objections*

2. Claims 1-20 are objected to because of the following informalities:

In claim 1, line 3, the word "a" should be changed to --the-- in front of the word warning.

In claim 1, line 5, the word "a" should be changed to --the-- in front of the word train.

In claim 11, line 5, the word "a" should be changed to --the-- in front of the word warning. Similar correction should be made to claim 9.

In claim 11, line 8, the word "a" should be changed to --the--in front of the word train.

Appropriate correction is required.

Claims 2-10, 12-20 are objected as being dependent upon objected base claims 1 and 11.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,609,049. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 meet all the limitations of claims 1-20 of U.S. Patent No. 6,609,049 except for a method for activating a warning device in which a speed of a train is not obtained from a global positioning system and in which the speed of the train is not part of a position selection. The general concept of simplifying a system or structure by reducing the number of parameter or components from the system falls within the realm of common knowledge as obvious mechanical expedient and the specific use of a method for activating a warning device without using the speed of the train constitute an obvious reduction of part which carry no patentable weight. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify US Patent No. 6,609,049 to achieve a method for activating a warning device on a train without the use of the speed of the train obtained from the positioning system in addition to not using the speed of the train as part of position selection in order to reduce or eliminate error or malfunction in activating the alarm as the train speed cannot be constant or similar at the approach of each station or location.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure;

Polivka et al are cited to show related method for controlling movement of a plurality of vehicles comprising the step of determining the status of a block and controlling movement of the vehicle based on the status of the block.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz F. Jules

Art Unit: 3617

Examiner  
Art Unit 3617

FFJ

April 15, 2004

FRANTZ F. JULES  
PATENT EXAMINER  
